

FILED ENTERED  
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MAR 4 2003 DJ

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TREVOR SCOTT GRIFFEY,

Plaintiff,

v.

THE CITY OF SEATTLE,  
a municipal corporation,

and

DAN WHELAN, in his capacity as a  
police officer for the City of Seattle and  
as an individual,

Defendants.

CV 03 0537L

COMPLAINT FOR DAMAGES



CV 03-0537 #1

COMPLAINT FOR DAMAGES - 1

**MUENSTER & KOENIG**  
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999 THIRD AVE., SUITE 4100  
SEATTLE, WASHINGTON 98104  
(206) 467-7500  
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310029 Miss

INTRODUCTION

1. This is a civil action seeking damages against the above-named defendants. The civil claims include a common law tort cause of action, statutory causes of action, and offenses committed under color of law resulting in a deprivation of rights secured by the Constitution and laws of the United States of America.

JURISDICTION AND VENUE

2. This Court has personal and subject matter jurisdiction over plaintiff's federal civil rights claims under Title 42, United States Code, § 1983, and Title 28, United States Code, §§ 1331 and 1343(a)(3).

3. This Court has pendent jurisdiction over plaintiff's state law claim and over defendants as to said claim, pursuant to Title 28, United States Code, § 1367 (Judicial Improvements Act of 1990), Public Law No. 101-650, 104 Stat. 5089 (1990).

4. The acts and omissions complained of herein occurred in King County, Washington, and the defendants are residents and citizens of the State of Washington.

5. Plaintiff is a resident and citizen of the state of Washington.

6. Venue in this Court is proper pursuant to Title 28, United States Code, § 1391.

PARTIES

7. Plaintiff Trevor Scott Griffey is a citizen of the United States and a citizen and resident of the state of Washington.

8. Defendant City of Seattle is a municipal corporation organized under the laws of the State of Washington. Defendant City of Seattle is sued directly under Title 42, United States Code, § 1983 as to the federal causes of action, and under the doctrine of *respondeat superior* as to the state law cause of action.

9. Defendant City of Seattle includes, as one of its agencies, the Seattle Police Department.

10. At all times material to this complaint, defendant Dan Whelan was a police officer employed by defendant City of Seattle. At all times material to this complaint, defendant Dan Whelan was an agent and employee of defendant City of Seattle and was acting within the scope of his employment with the City of Seattle, under color of the laws of the State of Washington.

11. Defendant Dan Whelan is sued in his individual capacity and in his official capacity as an agent and employee of defendant City of Seattle.

FACTUAL ALLEGATIONS

12. On or about August 25, 2001, a rally entitled "Reclaim the Streets" took place in downtown Seattle.

1  
2 13. Defendant City of Seattle sent officers of the Seattle police department to  
3 the downtown area. The officers patrolled the streets.

4 14. Defendant City of Seattle provided its police officers with what is believed  
5 to be pepper spray to use against citizens in the downtown area.

6 15. Pepper spray is a dangerous chemical weapon.

7  
8 16. Plaintiff Trevor Griffey stood on the sidewalk on Fifth Avenue between  
9 Olive and Virginia Streets in downtown Seattle.

10 17. Plaintiff was on the scene on assignment for the *Seattle Weekly* covering the  
11 rally.

12 18. Seattle police officers had formed a line on Fifth Avenue facing toward  
13 various citizens who stood on the Fifth Avenue sidewalk.

14  
15 19. Claimant observed Seattle police officer Dan Whelan walk onto the sidewalk  
16 and punch a young woman in the face. Whelan then walked towards claimant. Claimant  
17 told Whelan that he saw what Whelan did. Whelan pushed claimant and knocked him  
18 down on the sidewalk on his back.

19  
20 20. While plaintiff lay on his back on the sidewalk, Whelan sprayed chemical  
21 spray on claimant's face and body, resulting in personal injury.

22 21. Claimant was neither arrested nor charged with any offense.

23 22. Neither defendant Whelan nor any of the other police officers present  
24 provided or attempted to provide any first aid to plaintiff.  
25  
26

1  
2 23. A civilian photographer videotaped the incident. Seattle police seized the  
3 videotape.

4 24. Plaintiff notified the Seattle Police Department Office of Professional  
5 Accountability of the incident. That office conducted an investigation. No discipline was  
6 recommended or imposed.

7  
8 25. As a result of the acts and omissions of defendants, plaintiff suffered  
9 personal injuries.

10  
11 FIRST CAUSE OF ACTION:  
12 VIOLATION OF THE FIRST AMENDMENT

13 26. Plaintiff hereby incorporates and realleges as if fully set forth herein each  
14 and every allegation of paragraphs 1 through 25.

15 27. The acts and omissions of defendants herein were done under color of state  
16 law, custom or usage.

17  
18 28. Plaintiff had a federally-protected right, under the freedom of speech, press  
19 and assembly provisions of the First Amendment to the United States Constitution, to be  
20 present in downtown Seattle and to observe the contacts between police officers and  
21 citizens during the Reclaim the Streets-related protests and gatherings.

22  
23 29. The acts and omissions of defendants herein proximately caused the  
24 deprivation of the First Amendment rights of Trevor Griffey.

1  
2 30. As a proximate result of the acts and omissions of defendants and  
3 deprivation of plaintiff's First Amendment rights, plaintiff suffered personal injuries as set  
4 forth hereinabove.

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6 SECOND CAUSE OF ACTION:  
7 VIOLATION OF THE FOURTH AMENDMENT PROHIBITION  
8 AGAINST UNREASONABLE SEIZURES

9 31. Plaintiff hereby incorporates and realleges as if fully set forth herein each  
10 and every allegation of paragraphs 1 through 30.

11 32. The acts and omissions of defendants herein were done under color of state  
12 law, custom or usage.

13 33. Trevor Griffey was seized, for purposes of the Fourth Amendment to the  
14 United States Constitution, by the acts and omissions of defendants set forth herein.

15 34. Trevor Griffey had a federally-protected right, under the Fourth  
16 Amendment, not to be subjected to an unreasonable seizure.

17 35. The acts and omissions of defendants herein proximately caused the  
18 deprivation of the Fourth Amendment rights of Trevor Griffey.

19 36. As a proximate result of the acts and omissions of defendants and  
20 deprivation of plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as  
21 set forth hereinabove.

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THIRD CAUSE OF ACTION:  
VIOLATION OF FOURTH AMENDMENT  
PROHIBITION AGAINST THE USE OF UNREASONABLE FORCE

37. Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 36.

38. The acts and omissions of defendants herein were done under color of state law, custom or usage.

39. Trevor Griffey was seized, for purposes of the Fourth Amendment to the United States Constitution, by the acts and omissions of defendants as set forth herein.

40. Trevor Griffey had a federally-protected right, under the Fourth Amendment, not to be subjected to the use of unreasonable force against his person.

41. The acts and omissions of defendants herein proximately caused the deprivation of the Fourth Amendment rights of Trevor Griffey.

42. As a proximate result of the acts and omissions of defendants and the deprivation of plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as set forth hereinabove.

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FOURTH CAUSE OF ACTION:  
VIOLATION OF THE FOURTEENTH  
AMENDMENT DUE PROCESS CLAUSE

43. Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 42.

1  
2 44. The acts and omissions of defendants herein were performed under color  
3 of state law, custom or usage.

4 45. Trevor Griffey had federally-protected rights, under the Due Process Clause  
5 of the Fourteenth Amendment to the United States Constitution, to remain in a public place  
6 of his choice and the right to move from one place to another, in order to observe the  
7 actions of the police and the citizens in downtown Seattle.  
8

9 46. The acts and omissions of defendants herein proximately caused the  
10 deprivation of plaintiff's Fourteenth Amendment rights.

11 47. As a proximate result of the acts and omissions of defendants, plaintiff  
12 suffered personal injuries as set forth hereinabove.  
13

14 FIFTH CAUSE OF ACTION:  
15 MUNICIPAL LIABILITY OF THE CITY OF SEATTLE  
16

17 48. Plaintiff hereby incorporates and realleges as though fully set forth herein  
18 each and every allegation of paragraphs 1 through 47.

19 49. At all times material to this complaint, defendant City of Seattle, by and its  
20 chief of police, had in effect certain explicit and *de facto* policies, practices and customs  
21 which were applied to the treatment of civilians in downtown Seattle during the Reclaim  
22 the Streets protest, including the use of chemical weapons against innocent civilians such  
23 as plaintiff Trevor Griffey.  
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2           50.     For purposes of the incident described herein, it was the policy, custom and  
3 practice of the City of Seattle to utilize unreasonable force in violation of the First, Fourth  
4 and Fourteenth Amendment rights of the plaintiff, set forth hereinabove.

5           51.     It was further the policy of the City of Seattle to approve, acquiesce,  
6 condone and ratify the use of unreasonable force in violation of the First, Fourth and  
7 Fourteenth Amendment rights of the plaintiff in the incident described hereinabove.  
8

9           52.     The policy, practice and custom of approving, acquiescing in, condoning  
10 and/or ratifying the use of unreasonable force in violation of the First, Fourth and  
11 Fourteenth Amendment rights of the plaintiff in the incident described herein was a  
12 deliberate choice by defendant City of Seattle.  
13

14           53.     These policies, practices and customs were maintained with deliberate,  
15 reckless and/or callous indifference to the constitutional rights of the plaintiff as set forth  
16 hereinabove.  
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18           54.     The above-described policies, practices and customs of defendant City of  
19 Seattle proximately caused the deprivation of the First, Fourth and Fourteenth Amendment  
20 rights of the plaintiff.

21           55.     As a proximate result of the above-described policies, practices and customs  
22 of defendant City of Seattle, and as a result of the deprivation of plaintiff's First, Fourth  
23 and Fourteenth Amendment rights, plaintiff suffered personal injuries as set forth  
24 hereinabove.  
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3 SIXTH CAUSE OF ACTION:  
4 ASSAULT AND BATTERY

5 56. Plaintiff hereby incorporates and realleges as if fully set forth herein each  
6 and every allegation of paragraphs 1 through 55.

7 57. Defendants assaulted and battered plaintiff Trevor Griffey.

8 58. Defendant City of Seattle is liable for the actions of defendant Dan Whelan  
9 under the doctrine of *respondeat superior*.  
10

11 59. As a direct, proximate and foreseeable result of the wrongful actions  
12 described hereinabove, plaintiff has been damaged in an amount in excess of the minimum  
13 jurisdiction of this Court.  
14

15 PRAYER FOR RELIEF

16  
17 WHEREFORE, plaintiff prays for relief as follows:

18 Compensatory Damages: The defendants should be required to pay compensatory  
19 damages in an amount to be proven at trial.

20 Attorneys' Fees: The defendants should be required to pay the plaintiff's reasonable  
21 attorneys' fees and costs pursuant to Title 42, United States Code, § 1988.  
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DATED this the 31 day of March, 2003.

MUNSTER &amp; KOENIG

By: John R. Muenster  
JOHN R. MUENSTER  
WSBA No. 6237  
Attorney at Law

COMPLAINT FOR DAMAGES - 11

**MUENSTER & KOENIG**  
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JS 44  
(Rev. 07/89)

CIVIL COVER SHEET

CV 03 0537L

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I (a) PLAINTIFFS**

Trevor Scott Griffey

**DEFENDANTS**

City of Seattle; Dan Whelan

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF King  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT King  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

FILED ENTERED

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

John R. Muenster  
Muenster & Koenig  
999 - 3rd Ave., Suite 4100 Wells Fargo Center  
Seattle, WA 98104  
(206) 467-7500

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**ATTORNEYS (IF KNOWN)**

Seattle City Attorney's Office, Tort Division  
600 - 4th Ave., 10th Floor  
Seattle, WA 98104  
(206) 684-8200

**II. BASIS OF JURISDICTION**

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

Title 42, United States Code, § 1983: Violation of First, Fourth and Fourteenth Amendments; state law tort claim of assault and battery

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General <input type="checkbox"/> 540 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other		

**VI. ORIGIN**

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION

☐ UNDER F.R.C.P. 23

**DEMAND \$**

Check YES only if demanded in complaint:

**JURY DEMAND:** ☐ YES ☒ NO**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

March 3, 2003

UNITED STATES DISTRICT COURT